

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

EK VENTURES I, LLC; DAVID L. TAYLOR;
DAVID L. TAYLOR AND VIRGINIA L.
TAYLOR as TRUSTEES FOR THE TAYLOR
FAMILY REVOCABLE TRUST; and
FLEXTRONICS INTERNATIONAL LTD.,

Plaintiffs,

v.

JAMES R. BARTLETT and Z.B.R.
PUBLICATIONS, INC.,

Defendants.

CIVIL ACTION

No. 03 CV 12506 WGY

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs submit this memorandum of law in support of their motion for leave to file second amended complaint in the form attached to the accompanying motion as **Exhibit A**.

STATEMENT OF FACTS

In his Memorandum of Law in Support of His Motion to Dismiss the First Amended Complaint, Defendant James R. Bartlett ("Bartlett") alleges that he did not execute the Stock Purchase and Sale Agreement ("Agreement") at issue in this lawsuit in his personal capacity and that he is not a party to that agreement. *See* Memorandum in Support of Motion to Dismiss at pp. 2 – 3.

The Agreement contains 13 pages of warranties that are explicitly attributed to Bartlett, personally, along with GlobalWare and ZBR. *See* Agreement at pp. 20 – 34. In addition, on the

very page where Bartlett signed in his corporate capacity, it states that he is personally a party to the contract:

IN WITNESS WHEREOF, the Buyer [GlobalWare], ZBR, Bartlett, the Company [Bindco] and the Sellers have executed this Agreement as of the day and year first above written.

See Agreement at p. 45.

If at the time he signed, Bartlett was intending (as he is now doing) to disavow any responsibility as a party to the Agreement, his actions constituted fraud in the inducement where the Plaintiffs are concerned on the part of both himself and ZBR, on whose behalf he executed the Agreement. Massachusetts courts have found such behavior to be a violation of Massachusetts General Laws Chapter 93A, Section 11. *See Marshall v. Stratus Pharm., Inc.*, 749 N.E. 2d 698, 707 (Mass. App. Ct. 2001) (maintaining plaintiff stated claim under 93A by alleging defendant never intended to pay for services); *Levings v. Forbes & Wallace, Inc.*, 396 N.E. 2d 149, 154 (Mass. App. Ct. 1979) (affirming party violated Chapter 93A if it never intended to pay for services).

Because Bartlett has taken a position in his motion to dismiss that squarely raises claims for common law fraud and violation of Massachusetts General Laws Chapter 93A, justice requires the Court to allow Plaintiffs to amend their complaint to include those causes of action as provided by F.R.Civ.P. 15(a).

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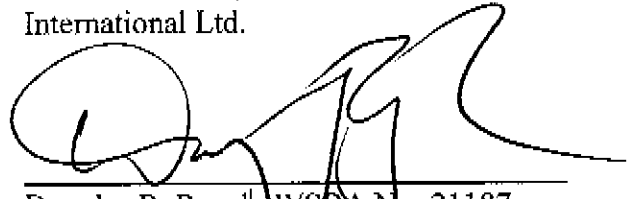
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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for leave to file their second amended complaint in the form attached to the accompanying motion.

Dated this 19th day of February, 2004.

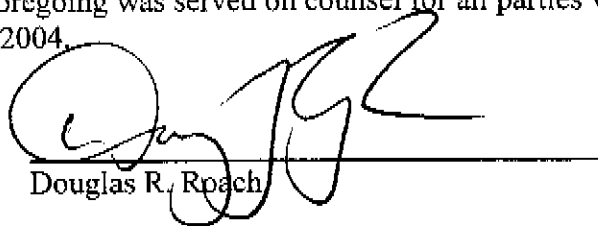
Respectfully submitted on behalf of the
Plaintiffs, EK Ventures I, LLC; David L.
Taylor; David L. Taylor and Virginia L.
Taylor as Trustees for the Taylor Family
Revocable Trust; and Flextronics
International Ltd.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for all parties via FedEx overnight delivery on February 19, 2004.



Douglas R. Roach